

## Railroad Retirement Board

## § 216.67

(5) Has not attained retirement age but has in his or her care a child who either is under age 18 or is disabled, and who is entitled to an annuity under subpart H of this part; or

(6) Is at least age 60 but has not attained retirement age. (In this case, the annuity is reduced for each month the remarried widow(er) is under retirement age when the annuity begins.)

(b) An individual entitled to a widow(er)'s annuity may be entitled to an annuity as a remarried widow(er) if he or she:

(1) Remarries after having attained age 60 (after age 50 if he or she has been determined to be disabled prior to his or her remarriage) and is not a surviving divorced spouse; or

(2) Is entitled to an annuity based upon having a child of the employee in his or her care and marries an individual entitled to a retirement, disability, widow(er)'s, mother's, father's, parent's, or disabled child's benefit under the Railroad Retirement Act or Social Security Act.

### § 216.64 What is required for payment.

An eligible widow(er), surviving divorced spouse, or remarried widow(er) must:

(a) Apply to be entitled for an annuity; and

(b) Submit evidence requested by the Board to support his or her application.

(Approved by the Office of Management and Budget under control number 3220-0030)

### § 216.65 Who is an employee's widow(er).

An individual who was married to the employee at the employee's death is the deceased employee's widow(er) if he or she:

(a) Was married to the employee for at least 9 months before the day the employee died;

(b) Is the natural parent of the employee's child;

(c) Was married to the employee when either the employee or the widow(er) adopted the other's child, or they both legally adopted a child who was then under 18 years old;

(d) Was married to the employee less than 9 months before the employee died but, at the time of marriage, the

employee was reasonably expected to live for 9 months; and

(1) The employee's death was accidental;

(2) The employee died in the line of duty while he or she was serving active duty as a member of armed forces of the United States; or

(3) The surviving spouse was previously married to the employee for at least 9 months;

(e) Was entitled in the month before the month of marriage to either:

(1) A benefit under section 202 of the Social Security Act as a widow, widower, spouse (divorced spouse, surviving divorced spouse), father, mother, parent, or disabled child; or

(2) An annuity under the Railroad Retirement Act as a widow, widower, divorced spouse, or surviving divorced spouse, parent or disabled child; or

(f) Could have been entitled to a benefit listed in paragraph (e) of this section, if the widow(er) had applied and been old enough to qualify therefor in the month before the month of marriage.

### § 216.66 Who is an employee's surviving divorced spouse.

An individual who was married to the employee is the deceased employee's surviving divorced spouse if he or she:

(a) Was married to the employee for a period of at least 10 years immediately before the date the divorce became final, and applies for an annuity based on age or disability; or

(b) Applies for an annuity based on having a "child in care" and either:

(1) Is the natural parent of the employee's child;

(2) Was married to the employee at the time the employee or the surviving divorced spouse adopted the other's child who was then under 18 years old; or

(3) Was married to the employee at the time they adopted a child who was then under 18 years old.

### § 216.67 "Child in care."

(a) *Railroad Retirement Act.* Part 222 of this chapter sets forth what is required to establish that a child is in an individual's care for purposes of the Railroad Retirement Act. This definition is used to establish eligibility for the tier

II component of a female spouse or widow(er) annuity under that Act. Under this definition a child must be under age 18 or under a disability before any benefit is payable based upon having the child in care.

(b) *Social Security Act.* In order to establish eligibility for the tier I components of a spouse or widow(er) annuity, and eligibility for a surviving divorced spouse annuity based upon having a child of the employee in care, the definition of “child in care” found in the Social Security Act is used. Under this definition, a child must be under age 16 or under a disability.

**§ 216.68 Disability period for widow(er), surviving divorced spouse, or remarried widow(er).**

A widow(er), surviving divorced spouse, or remarried widow(er) who has a disability as defined in part 220 of this chapter is eligible for an annuity only if the disability began before the end of a period which:

- (a) Begins in the later of:
  - (1) The month in which the employee died;
  - (2) The last month for which the widow(er) or surviving divorced spouse was entitled to an annuity for having the employee's child in care; or
  - (3) The last month for which the widow(er) or surviving divorced spouse was entitled to a previous annuity based on disability; and
- (b) Ends with the earlier of:
  - (1) The month before the month in which the widow(er) or surviving divorced spouse or remarried widow(er) become 60 years old; or
  - (2) The last day of the last month of a 7-year period (84 consecutive months) following the month in which the period began.

**Subpart H—Child's Annuity**

**§ 216.70 General.**

The Railroad Retirement Act provides an annuity for the child of a deceased employee but not for the child of a living employee. The Act does provide that the child of a living employee can establish another individual's eligibility for a spouse annuity or cause an increase in the annuities of an employee and spouse. The eligibility re-

quirements described in this subpart also apply for the following purposes, except as otherwise indicated in this part:

- (a) To establish annuity eligibility for a spouse under subpart F of this part if he or she has the employee's eligible child in care;
- (b) To establish annuity eligibility for a widow(er), or surviving divorce spouse or remarried widow(er) under subpart G of this part if he or she has the employee's child in care; or
- (c) To provide an increase in the employee's annuity under the Social Security Overall Minimum Guaranty (see part 229) by including the eligible child.

**§ 216.71 Who is eligible for a child's annuity.**

An individual is eligible for a child's annuity if the individual:

- (a) Is a child of an employee who has completed 10 years of railroad service and had a current connection with the railroad industry when he or she died;
- (b) Is not married at the time the application is filed;
- (c) Is dependent upon the employee as defined in part 222 of this chapter; and
- (d) Meets one of the following at the time the application is filed:
  - (1) Is under age 18; or
  - (2) Is age 18 or older and either:
    - (i) Is disabled as defined in part 220 of this chapter before attaining age 22 (the disability must continue through the time of application for benefits);
    - (ii) Is under age 19 and is a full-time student as defined in § 216.74 of this part; or
    - (iii) Becomes age 19 in a month in which he or she is a full-time student and has not completed the requirement for, or received a diploma or certificate from, a secondary school.

**§ 216.72 What is required for payment of a child's annuity.**

An eligible child of a deceased employee is entitled to an annuity upon applying therefor and submitting any evidence requested by the Board.

(Approved by the Office of Management and Budget under control number 3220-0030)